

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETERSEN ENERGÍA INVERSORA,
S.A.U. AND PETERSON ENERGÍA,
S.A.U.,

Plaintiffs,

15 Civ. 2739 (LAP)

-against-

ARGENTINE REPUBLIC and YPF
S.A.,

Defendants.

ETON PARK CAPITAL MANAGEMENT,
L.P. et al.,

Plaintiffs,

16 Civ. 8569 (LAP)

-against-

ARGENTINE REPUBLIC and YPF
S.A.,

Defendants.

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court is the motion of non-party Chamber of Companies ("CS") for leave to file an amicus brief in connection with the pending cross-motions for summary judgment in these matters. (Dkt. no. 420-422.)¹ The cross-motions for summary judgment were fully briefed as of June 23, 2022 (see dkt. nos. 403-414), and CS filed its motion for leave to file an amicus brief some six weeks later, on August 9, 2022 (dkt. no. 420).

¹ Unless otherwise indicated, all references to documents on the docket are to Case No. 15 Civ. 2739.

On August 10, 2022, the Court granted CS's motion by memo endorsement. (Dkt. no. 423.) Later that day, Plaintiffs moved for reconsideration and requested an opportunity to be heard on the motion. (Dkt. no. 426.) Upon receiving Plaintiffs' letter, the Court granted the motion for reconsideration (based on CS's providing insufficient time for comment to the parties) and invited any additional comment on CS's motion for leave to file an amicus brief. (Dkt. no. 427.) On August 16, 2022, the Court received letters from each of (1) Plaintiffs, (2) Defendant the Republic, (3) Defendant YPF, and (4) CS. (Dkt. nos. 428-431.) CS submitted a supplemental response on August 17, 2022. (Dkt. no. 432.)

"[D]istrict courts have broad discretion to permit or deny the appearance of an amicus curiae in a case." Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey, No. 11 Civ. 6746 (RJH), 2011 WL 5865296, at *1-2 (S.D.N.Y. Nov. 22, 2011). "The usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties." Id. at *1. But courts in this district routinely reject untimely filed amicus briefs. See, e.g., United States v. Yaroshenko, 86 F. Supp. 3d 289, 290 (S.D.N.Y. 2015). That is because, as a general matter, the parties to the case or controversy before the Court should have the opportunity to engage with the arguments and perspectives of

amici without resorting to supplemental briefing, which might unduly delay the proceedings or unduly prejudice one or more of the parties. As Plaintiffs put it, "[w]ithout a reasonable cut-off, amicus briefs supply a vehicle for groups aligned with one party to get the last word, contrary to the Court's briefing schedule, or to delay the proceedings by prompting unnecessary briefing about the arguments of non-parties." (Dkt. no. 430 at 2.) And, indeed, CS concedes that its proposed amicus brief "provide[s] the Court with an important, independent perspective on Argentine corporate law and the potential significant implications of the Court's ruling on Argentine companies and their shareholders that extend far beyond the interests of the parties to this litigation." (Dkt. no. 431 at 2.)

That CS's motion came more than six weeks after the parties had completed briefing on the cross-motions does not necessarily warrant denial of CS's motion. See, e.g., Andersen v. Leavitt, No. 03-cv-6115 (DRH) (ARL), 2007 WL 2343672, *5-6 (E.D.N.Y. Aug. 13, 2007). A court may determine that the perspectives offered by an amici are helpful and do not, in fairness, require an opportunity by the parties to respond. But that is not the case here.

CS's brief injects new material into the litigation to which the parties ought to have had--but did not have--the opportunity to respond, which raises fairness issues and the

possibility of undue prejudice to one or more of the parties. See Waste Mgmt. of Penn, Inc. v. City of New York, 162 F.R.D. 34, 36 (M.D. Pa. 1995) ("The named parties should always remain in control, with the amicus merely responding to the issues presented by the parties. An amicus cannot initiate, create, extend, or enlarge issues"); Andersen v. Leavitt, No. 03-CV-6115 (DRH) (ARL), 2007 WL 2343672, at *2 (E.D.N.Y. Aug 13, 2007) ("[A]n amicus curiae brief should not be used to address wholly new issues not raised by the parties."). The Court must therefore balance its interest in hearing the perspectives of amici and amicus' interests in being heard against the interests of the parties in the timely and efficient disposition of their controversy in a predictable manner.

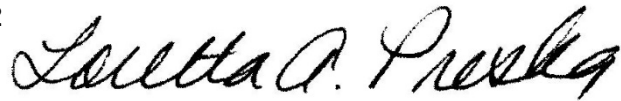
The Court concludes that CS's proposed amicus brief is of little aid to the Court in resolving the cross-motions, and the burden to the court system and the parties in accepting the amicus brief with or without supplemental briefing outweighs any benefit the Court might derive from CS's offering. Ordering supplemental briefing would permit the parties to respond to CS, but it would unnecessarily delay these proceedings. And accepting CS's amicus brief without supplemental briefing would be unfair both to Plaintiffs and to the Court, as the Court would not benefit from Plaintiffs' probing of CS's views, which

under the circumstances would only further diminish any benefit CS's brief might offer.

Accordingly, CS's motion for leave to file an amicus brief is denied. The Court declines to exercise its discretion to accept an amicus brief that would either result in a further delay in the proceedings or in unnecessary unfairness to Plaintiffs, all to allow the late entry of an amicus whose brief offers little aid to the Court.

SO ORDERED.

Dated: New York, New York
August 18, 2022

A handwritten signature in black ink, reading "Loretta A. Preska". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LORETTA A. PRESKA
Senior United States District Judge